



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Secretary of Natural Resources

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Director  
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### **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ATLANTIC WASTE DISPOSAL, INC. FOR THE ATLANTIC WASTE DISPOSAL LANDFILL Solid Waste Permit No. 562**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Atlantic Waste Disposal, Inc., regarding the Atlantic Waste Disposal Landfill, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations. This Order supersedes and terminates the Consent Order issued by the Board to Atlantic Waste Disposal, Inc. on October 29, 2015, and the Emergency Order by Consent issued February 5, 2016.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Atlantic" means Atlantic Waste Disposal, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Atlantic is a "person" within the meaning of Va. Code § 10.1-1400.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Landfill" means the Atlantic Facility located at 3474 Atlantic Lane in Waverly, Virginia.
6. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Permit" means Solid Waste Permit No. 562, which was issued under the Virginia Waste Management Act and the Regulations to Atlantic on December 29, 1993.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through 10.1-1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. On December 29, 1993, Atlantic was granted a permit to operate a sanitary Landfill by the Director of DEQ. The Permit allows for the disposal of sanitary waste.
2. The Facility has been operated as a sanitary Landfill since the Permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. In 2014 Atlantic indicated there was a gas management issue at the site. Atlantic purchased the Waverly Gas Producer system to gain control of the operation and the Facility installed its own flare. In mid 2014, Atlantic also began experiencing elevated temperatures in gas extraction wells as a result of an exothermic reaction within the waste

mass. In addition to the elevated temperatures and odors, the Facility also began experiencing an increase in Leachate production.

4. In August 2014, DEQ began receiving multiple complaints of odors related to the Facility from residents of Sussex and Prince George Counties.
5. On January 22, 2015 and April 28, 2015, Atlantic met with DEQ to provide information relevant to the elevated temperature and settlement issues.
6. On March 10, 2015, the Facility experienced a significant release of Leachate off the lined disposal area to nearby wetlands that resulted in Notice of Violation No. 2015-04-PRO-651 and No. 15-03-PRO-701 being issued to Atlantic on April 1 and 2, 2015, respectively, by DEQ.
7. In order to address the odor issues, Atlantic proposed installing a 30 acre temporary synthetic cover. The modification was approved by DEQ on March 30, 2015.
8. Due to increased Leachate production, Atlantic submitted a permit modification in June 2015, along with a temporary authorization request for the construction of a temporary Leachate storage impoundment.
9. Atlantic has subsequently submitted additional temporary authorization requests for additional Leachate impoundments, for a total of 11 lagoons with a maximum design capacity of 114,117,148 gallons.
10. In September 2015, Atlantic submitted a permit modification to revise the March 30, 2015, modification for the temporary synthetic cap, to include a slope buttress to address slope stability issues. This permit modification was approved by DEQ on September 14, 2015.
11. The Virginia Waste Management Board executed a Consent Order with Atlantic on October 29, 2015, for finding number C.6, described above.
12. The State Water Control Board executed a Consent Order with Atlantic on November 23, 2015, for finding number C.6, described above.
13. On December 3, 2015, during a Department inspection, Leachate was observed flowing outside the limits of the lined disposal area, through a stormwater culvert pipe which extended under the perimeter road located adjacent to undeveloped Cell 12A. The Leachate flowed from the culvert pipe, beyond groundwater monitoring well MW-32, continuing approximately 50 feet before entering forested wetlands. The Leachate was observed to have flowed approximately 500-600 feet within the forested wetlands, impacting approximately 3.4 acres.
14. 9 VAC 20-81-210(F) states "Leachate seeps. If a leachate seep(s) occurs, the owner or operator shall repair the seep(s) and do the following: 1) Take all immediate steps necessary to protect public health and safety including those required by the contingency

plan, 2) Take immediate action to minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep, and 3) Any leachate released outside the lined area permitted for waste disposal shall be properly collected and disposed.”

15. During the December 3, 2015, inspection, Atlantic stated they were unaware of the Leachate flowing into forested wetlands and thus did not provide notification to the Department.
16. 9 VAC 20-81-530(C)(3) states that “The permittee shall report to the Department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance.”
17. The December 3, 2015, inspection also revealed at least four sinkholes which were observed on top of the landfill in the vicinity of Cells 5A and 6A. The sinkholes varied in size, ranging from 12 to greater than 15 feet in diameter with unknown depth.
18. The sinkholes appeared to be continuously emitting odor and steam. Four sinkholes had been marked off with yellow caution tape to alert personnel of the holes. Facility personnel reported that the sinkholes were a result of landfill gas wells collapsing and being consumed in the landfill. Atlantic did not provide 24 hour notification and 5 day follow up to the Department about the existence of the sinkholes, as required by 9 VAC 20-81-530(C)(3).
19. On December 21, 2015, the Department issued NOV No. 2015-12-PRO-651 to Atlantic for an unauthorized discharge of Leachate to state waters, failure to take immediate steps to minimize, control or eliminate the Leachate seep, and failure to provide the Department with notification of the sinkholes.
20. On January 6, 2016, Atlantic submitted the Atlantic Waste Disposal Landfill Management Plan (Plan) to the Department. The purpose of the Plan is to 1) proactively inspect and manage landfill operations; 2) manage daily operations and management of seeps and repairs; and, 3) manage daily risks related to the elevated temperatures. This document is incorporated into the October 29, 2015, Order by reference.
21. On January 12, 2016, the Department met with Atlantic to discuss the NOV issued by the Department on December 21, 2015.
22. In response to Department observations that Atlantic is adversely affecting the environment as a result of the elevated temperature within the landfill waste mass,

increased Leachate production and potentially compromised slope stability, on February 5, 2016, the Department issued an Emergency Order by Consent (EO) to Atlantic requiring Leachate and sinkhole remediation, implementation of the Plan submitted January 6, 2016, and an updated financial assurance mechanism. The EO will be terminated on the day this Consent Order is executed.

23. Based on the results of the December 3, 2015 inspection, and the January 12, 2016 meeting, the Board concludes that Atlantic has violated 9 VAC 20-81-210(F) and 9 VAC 20-81-530(C)(3) as described in Section C above.
24. The purpose of this Consent Order is to include a schedule for any unfinished requirements in the EO and to assess a civil charge for the violations noted above.
25. In order for Atlantic to complete its return to compliance, DEQ staff and representatives of Atlantic have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Atlantic and Atlantic agrees to:

1. Perform the actions described in Appendix A of this Order;
2. Pay a civil charge of \$99,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Both the Board and Atlantic understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to Atlantic on October 29, 2015, and the Emergency Order by Consent issued by the Department to Atlantic on February 5, 2016.

Both the Board and Atlantic understand and agree that pursuant to provision E(10), below, and Appendix A of this Order, Appendix A of the Emergency Order by Consent issued by the Department to Atlantic on February 5, 2016, shall be terminated and superseded by Appendix A of this Order upon Atlantic's signing of this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Atlantic shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements

of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Atlantic shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Atlantic for good cause shown by Atlantic, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Atlantic admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Atlantic consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Atlantic declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Atlantic to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Atlantic shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Atlantic shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred

that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Atlantic. Nevertheless, Atlantic agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Atlantic has completed all of the requirements of the Order;
  - b. Atlantic petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Atlantic.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Atlantic and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Atlantic certifies that he or she is a responsible official, authorized to enter into the terms and conditions of this Order and to execute and legally bind

Atlantic to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Atlantic.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Atlantic voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jefferson D. Reynolds, Director,  
Division of Enforcement  
Department of Environmental Quality

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Atlantic Waste Disposal, Inc. voluntarily agrees to the issuance of this Order.

Date: June 8, 2016 By: HSN, Director of Disposal Operations  
Name Title  
Atlantic Waste Disposal, Inc.

Commonwealth of Virginia

City/County of Sussex

The foregoing document was signed and acknowledged before me this 8th day of June, 2016, by Harold Scott Thacker on behalf of the corporation.



[Signature]  
Notary Public

7680085  
Registration No.

My commission expires: 6/30/20

Notary seal:

## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. Upon Atlantic's signing of this Order, Atlantic shall continue to utilize the January 2016 Atlantic Waste Disposal Landfill Management Plan (Plan), incorporated here by reference. Fifteen days after the issuance of this Order, Atlantic will submit to the Department for review and approval a new Appendix I from the January 2016 (revised March 2016) Atlantic Waste Disposal Landfill Management Plan, or the most recent revision. The new appendix must have dates of completion for each task. Once approved by the Department the new schedule will become a part of the Plan and this Order. Atlantic shall notify the Department of any modifications to the Plan within 24 hours and resubmit a copy within 5 working days. If any conflict between the Plan and provisions of this Order arise, Atlantic shall notify the Department. The Department, in consultation with Atlantic, will make a determination as to the resolution of such a conflict.
2. Until the Phase One Capping Project is completed, Atlantic shall not accept more than 35,000 tons of waste per week (Monday through Sunday). Atlantic shall record waste acceptance figures, in both daily and weekly amounts, and keep the records on site for review by Department staff during Landfill inspections.
3. Upon Atlantic's signing of this Order, Atlantic shall continue to collect monthly data regarding the internal temperature of the Landfill. The temperature records shall be kept on site for review by Department staff during Landfill inspections.
4. Upon Atlantic's signing of this Order, Atlantic shall remove no less than 3,500,000 million gallons of Leachate and contaminated stormwater per week (Monday through Sunday). Atlantic shall record Leachate and stormwater data, in both daily and weekly amounts, and keep the records on site for review by Department staff during Landfill inspections.
5. Contact

Unless otherwise specified in this Order, Atlantic shall submit all requirements of Appendix A of this Order to:

Frank Lupini  
Enforcement Specialist  
VA DEQ –Piedmont Regional Office  
4949A Cox Road,  
Glen Allen, Virginia 23060  
Frank.Lupini@deq.virginia.gov